

IN THE MATTER OF THE ONTARIO HUMAN
RIGHTS CODE 1961-62

AND IN THE MATTER OF a complaint of Miss
Vaulda Duncan that she was discriminated against
in being denied the opportunity to rent living
accommodation by Mr. and Mrs. John Szoldatits
at 11 Olive Avenue in the City of Toronto because
of her race and colour.

R E P O R T

Pursuant to my appointment by the Honourable Dalton Bales Q.C.,
Minister of Labour, as a Board of Inquiry, to inquire into the
above-mentioned matter, I presided at a hearing in Committee
Room Number 2, in the Parliament Buildings in Toronto on
November 8, 1968. The respondents were represented at the
hearing by Mr. Gordon A. Heinrich, and the Ontario Human
Rights Commission by Mr. A.E. Charlton.

A careful examination of the evidence and submissions at
the hearing discloses that there are three issues involved in this
matter and these are: (1) was an act of discrimination on the
ground of race and colour in fact committed in respect of the
rental of living accommodation, (2) if so, was the act committed
by both respondents, and (3) if such an act was committed by

the respondents, or either of them, was such an act, having regard to the nature of the premises involved, one which is prohibited by the Ontario Human Rights Code 1961-62? It is my intention to deal with each of these issues in turn.

1) Was a discriminatory act based on race and colour committed?

The respondents, Mr. and Mrs. John Szoldatits, are the owners of a semi-detached eight-room house at 11 Olive Avenue in Toronto and occupy the ground floor portion of the premises. The owners rent the second-floor flat and the two-room attic to different tenants. At the end of April 1968, the second-floor flat became vacant and a classified advertisement under the heading "Flats" was inserted in the Toronto Daily Star early in May. This advertisement was in the following language:

"Bathurst-Bloor, 2 rooms, kitchen, stove, frig.
Adults. 532-5454."

This, at any rate, was the language in the advertisement in the Star on Saturday, May 4, 1968, the day on which the complainant Miss Vaulda Duncan noticed it. In the afternoon of May 4, Miss Duncan telephoned the number shown in the advertisement and spoke, I find, to Mrs. Szoldatits, one of the owners. After ascertaining that the flat was located at 11 Olive Avenue and had a kitchen and bathroom, Miss Duncan, accompanied by two friends,

attended at the house and was met at the door by Mrs. Szoldatits. Miss Duncan, it should now be pointed out, is a respectable young woman, of pleasant appearance, gainfully employed in an important position in a Toronto hospital, and, quite apparently, a person with Negro antecedents. At the time of the meeting between the complainant and Mrs. Szoldatits, the flat was clearly still vacant and, refusing to allow Miss Duncan the opportunity of renting it, Mrs. Szoldatits made no pretense that it was unavailable because it had already been rented. Instead, she told Miss Duncan, upon learning the purpose of her visit, in what can only be described as incredibly direct language, that she did not rent to coloured people or, in fact, to anyone who was ^{neither} Hungarian (Mrs. Szoldatits is of Hungarian origin) nor German. She may also have said that her other tenant would object to sharing the bathroom with a coloured person but the evidence on this point is not entirely uncontradicted. What is openly admitted, however, is that Miss Duncan was told that the flat was not available to anyone who was coloured. Mrs. Szoldatits testified that she did not mean to discriminate against Negroes, that she only intended, in effect, to discriminate in favour of Hungarians and Germans, and that the only reason she told Miss Duncan that she didn't rent to coloured persons was because, in fact,

Miss Duncan was coloured but that if Miss Duncan had been, say, Greek, Mrs. Szoldatits would have told her that she did not rent to Greeks. Simply put, the basic position which Mrs. Szoldatits took was that she did not discriminate against Miss Duncan because she was coloured; she discriminated against her because she was neither Hungarian nor German. She is, in my view, either unwilling or unable to understand that this form of discrimination is nonetheless discrimination "because of the race, creed, colour, nationality, ancestry or place of origin" of Miss Duncan and thus an act which falls within the kind of conduct prohibited by the Ontario Human Rights Code 1961-62. Her position was not, however, quite as simple and unconfused as I have stated it. Elsewhere in her evidence Mrs. Szoldatits testified that her reason for wanting only Hungarian or German tenants was because she would have no difficulty in communicating with them in Hungarian or German. If she was unable, she said, to get Hungarians or Germans, she would rent to others but only after first satisfying herself that the prospective tenants were "good" or proper persons. It is significant, however, that she made no effort to ascertain whether Miss Duncan was a "good" or proper person, but rather rejected her on the basis of her colour. In her testimony Mrs. Szoldatits emphasized the disorderly conduct which she had



experienced with tenants of ethnic origins other than Hungarian or German, and although she denied it when the question was put to her directly, I was left with the impression from this emphasis and from her statement that she had never experienced improper or disorderly conduct by Hungarians or Germans, that she regarded Hungarians and Germans, on the whole, as a better class of persons.

I have concluded, then, not only that Mrs. Szoldatits did refuse the flat to Miss Duncan because she was neither Hungarian nor German, but as she made no effort to ascertain whether Miss Duncan was a proper person, and in view of the specific reference to colour in her statement of refusal, that she refused the flat to Miss Duncan because she was "coloured". Section 3 of the Ontario Human Rights Code 1961-62 provides that no person shall deny to any person occupancy of any self-contained dwelling unit because of the race, creed, colour, nationality, ancestry or place of origin of such person and accordingly, (and leaving until later the question of the nature of the premises) it is my opinion that Mrs. Szoldatits committed a discriminatory act of the kind prohibited by section 3.

2) Was the discriminatory act committed by both respondents?

The respondents are husband and wife and, as I have indicated, together own the premises in respect of which the

act of discrimination against Miss Duncan was committed by the respondent wife. The question whether Mr. Szoldatits can also be held responsible for the discrimination can be disposed of quite briefly. I do not see how the evidence can sustain a finding of, or a participation in, the commission of the discriminatory act on the part of Mr. Szoldatits. If there are cases in which an act of a wife with relation to property owned jointly or in common with her husband can be attributed to the husband, on the basis, for example, of some doctrine of agency, this is not one of them. It is true that there was some evidence indicating that Mrs. Szoldatits was concerned that her husband should not find out about the Commission's involvement in the matter after Miss Duncan had made her complaint, but that evidence was not entirely clear whether her concern was that Mr. Szoldatits should not learn anything about the incident in the first place, or that he should not hear that Mrs. Szoldatits had entered into some amicable settlement of the matter. In any event, what little evidence there was in this connection was far too tenuous to permit the conclusion that Mr. Szoldatits had been a party to the discrimination.

3) In view of the nature of the flat, was the discrimination prohibited by the Ontario Human Rights Code 1961-62?

This is the issue which requires for its determination an

interpretation of section 3 of the Code, and turns on the answer to the question whether the flat which Mrs. Szoldatits sought to rent was a "self-contained dwelling unit". Section 3 of the Code reads as follows:

"No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall,

(a) deny to any person or class of persons occupancy of any commercial unit or any self-contained dwelling unit; or

(b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any self-contained dwelling unit,

because of the race, creed, colour, nationality, ancestry or place of origin of such person or class or persons."

A brief description of the flat in question and its relationship with the rest of the house is necessary for a clear understanding of the interpretation of section 3 of the Code and particularly of its application to the flat. The ground floor of the semi-detached house at 11 Olive Avenue in Toronto is occupied by the owners of the house, Mr. and Mrs. Szoldatits and their young son and consists of a living room, a bedroom and kitchen. The second floor, access to which is by a staircase from the entrance hall that is the same hall giving entrance to the living quarters on the ground floor, contains the flat in question. Running along the second floor from the front or living room to the kitchen at the

rear is a hall from which access is obtained to each of the rooms on this floor, namely, a living room, bedroom, bathroom and kitchen. There is no direct access from one room to another on the second floor, and to get from room to room it is necessary to do so by entering this second-floor hall. It is these rooms on the second floor that comprise the flat in issue. From this same hall there is a staircase leading to the two rooms in the attic which are occupied by a different tenant. Except for the bathroom on the second floor, no room in the flat is occupied or entered, except with permission, presumably, by the owners or the tenant of the third-floor rooms. The bathroom is shared by the third-floor tenant, the tenant of the flat and by the Szoldatits family although the latter also have the use of a washroom in the basement where there is also to be found laundry facilities used by the Szoldatits and those tenants who wish to use them. For the tenants to go to the laundry room in the basement directly from their own quarters it is necessary to go through at least one room occupied by the Szoldatits family. The tenant or tenants of the flat, it will be seen, occupy premises or rooms which no other persons needs to or, without permission, has the right to, enter. In other words, no one but that tenant is entitled to enter that part of the second floor of which under his tenancy he has exclusive possession.

The right of others to use the second-floor bathroom is in no way a qualification of this statement because the tenant of the flat does not, under the tenancy, have exclusive possession of the bathroom. What is particularly significant is the fact that no one in the house, whether owner or tenant has exclusive possession of this bathroom. The issue, then, is whether the existence of (a) the common entrance hall on the ground floor, or (b) the shared bathroom and the necessity to "invade the privacy" of the owners in order to get from the tenants' quarters to the laundry facilities in the basement deprive the flat of the quality of being a "self-contained dwelling unit". I have concluded that they do not.

An analysis of the statutory language and its history supports the conclusion at which I have arrived. At first blush a person examining the Code as amended, and particularly the office consolidation copy of the Code distributed by the Commission as part of its educational programme, and unfamiliar with the history of section 3 and the process of legislative amendment, might think, and might be forgiven for thinking, that section 3 has no application to residential accommodation that is not in an apartment building. The marginal note to section 3 of the Code reads: "Discrimination prohibited in apartment buildings". It is clear that this marginal note is most inappropriate, does not reflect the

language or intent of the section 3, and is a relic of an earlier version of the Code. The office consolidation copy purports to be the Code as it appears in the Statutes of Ontario 1961-62 chapter 93 as amended. In chapter 93 of the Statutes of 1961-62, the prohibition related to "any apartment in any building that contains more than six self-contained dwelling units", and, accordingly, the marginal note was not inappropriate. It became inappropriate, however, when, by the Statutes of Ontario 1967 chapter 66, the prohibition was changed to make it applicable to "any self-contained dwelling unit." (There had been, it should be pointed out, an intermediate stage, brought about by the amendment in the Statutes of Ontario 1965, chapter 85, when the prohibition was changed to make it applicable to "any apartment in any building that contains more than three self-contained dwelling units"). This brief history of the section should serve to expose the extent to which the marginal note which made sense when the section referred to "any apartment in any building ---" no longer made sense when that language was replaced in 1967 by the words "any self-contained dwelling unit." Immediate attention should be paid to the desirability of removing the present misleading marginal note.

In any event, a marginal note to a statutory provision is of

no assistance in the interpretation of that provision. The Interpretation Act R.S.O. 1960 chapter 191, which applies to the Code, as it does to most statutes, is pertinent here.

Section 9 of that Act provides as follows:

The marginal notes and headings in the body of an Act and references to former enactments form no part of the Act but shall be deemed to be inserted for convenience of reference only.

The legislative history of section 3 of the Code, to which I have already referred, shows an unmistakable pattern in the evolution of legislative intention in human rights legislation within a relatively short period of time. Two results stand out conspicuously in that evolution, namely the disappearance of the reference to apartments and the extension of the prohibition against discrimination to any self-contained dwelling unit irrespective of the number of units in the given building. It is still possible to discriminate in the rental of accommodation on the grounds of race, creed, colour, nationality, ancestry or place of origin but only if what is rented is not a self-contained dwelling unit. In other words, only if the prospective "tenant" is to share the landlord's hearth, is discrimination against that tenant permissible. If the tenant is expected, not to become part of the landlord's household,

but to "live unto himself", he may not, under the Ontario Human Rights Code, be denied accommodation on the grounds mentioned in section 3. This conclusion is supported by the language of section 10 of the Interpretation Act R.S.O. 1960 c 191 which requires that the Code (along with every other Act) shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit". I am further fortified in my conclusion by the similar conclusion at which a Board of Inquiry, under the chairmanship of Dean Walter Tarnopolsky arrived in a Report submitted to the Commission in July 1968 in the matter of the complaint of Miss Monica Mitchell.

The test, then, of what constitutes a "self-contained dwelling unit" is whether the tenant will be intruding into the landlord's routine family life. If the tenant can, in the particular circumstances, live a complete and normal life in the rented quarters, his quarters are a "self-contained dwelling unit" within the meaning of section 3 of the Code. Purely by way of clarification, in the hope that my meaning may be better comprehended by the reader, let me suggest that the modifier "self-contained" relates more to "dwelling" than it does to "unit". I reject the necessity of a private and

exclusive access to and from the quarters in question to constitute those quarters a "self-contained dwelling unit".

It follows from what I have said that the premises with which I am concerned in this Inquiry, constitute a "self-contained dwelling unit". Neither the common entrance hall nor the shared bathroom remove the flat from the category of self-contained dwelling unit. The necessity of entering the landlord's living quarters if the tenant is to go directly to the laundry room from his or her premises does not make that tenant part of the landlord's household. Indeed, in an area of easy accessibility of commercial laundry services, and laundromats, it is far from inevitable that a working tenant, whose time for laundry is of necessity limited, will use the laundry facilities of the landlord. I am satisfied that the flat for which Mrs. Szoldatits was seeking a tenant was a self-contained dwelling unit and, accordingly, her act of discrimination fell within the prohibition of, and was an offence under, section 3 of the Ontario Human Rights Code. I regard it as unfortunate, to say the least, that at this time in history, the attitude towards human rights in Ontario is such that one would resort to the defence that the sort of racial discrimination which was practised in a particular case has not yet been clearly prohibited by the Legislature.

Having determined that Mrs. Szoldatits had committed an act of discrimination against Miss Duncan, contrary to the provisions of the Ontario Human Rights Code, I have given a great deal of consideration to the recommendations which I should make to the Commission. I confess that this has been the hardest part of my task. Miss Duncan suffered no financial loss as a result of the discrimination. Compensation of that kind therefore has no place in any set of recommendations. There are too many inadequacies in a prosecution for a summary conviction offence under the Code to make it satisfactory for me to recommend that course of action. These inadequacies include the limited solace a prosecution would provide the complainant for the grievous insult suffered, the absence of educational value for this respondent that would result from a fine in the event of a conviction, and the problems of proof that would be created by a prosecution. I indicated at the hearing that I regarded a recommendation that the Commission recommend to the Minister that he order the respondent to apologize to the complainant, enter into a formal agreement to offer the accommodation when next available or extend financial help to the complainant in finding alternative accommodation the next time she requires it, and write to various community organizations to express her non-discriminatory policy was not appropriate on the facts of this case. A solution of this sort, I thought, and, indeed,



still do think, makes much sense, and is salutary, where it is a voluntary act on the part of the person who offended. I was of the view at that time, however, that it was quite otherwise when the situation was one in which the offender refused to acknowledge that she had discriminated, or, if she had, claimed a right to do so. According to my thinking at that time, it was difficult to justify a prosecution for failing to obey a ministerial order which required the offender, in effect, to act hypocritically. Further reflection and an opportunity to study the Report of Governor Rockefeller's Committee to Review New York Laws and Procedures in the Area of Human Rights, dated March 27, 1968, a copy of which was submitted to me as a Board of Inquiry in another matter, have brought about a change in my view. The New York Report, which I strongly urge be given serious attention by the Commission, emphasizes the greatest deficiency in human rights legislation, namely the enforcement machinery. The Report, correctly, in my respectful opinion, recognizes this deficiency as one requiring for its solution fairly strong legislative intervention including, for example, at the administrative level, the power to impose fines against respondents found guilty of discriminatory practices and the creation of a private cause of action for damages or equitable relief in the person whose human rights have been violated by discriminatory practices. More

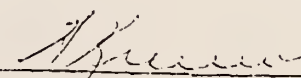
important than anything else, however, is the usefulness of the Report in serving as a reminder that the position of the victim of discrimination should be of paramount concern. It is not, at this late date, sufficient merely to expose discrimination in the hope that such exposure will have an educational effect in diminishing the incidence of discrimination in our society.

While I am far from satisfied that the power of a Board of Inquiry under section 13(3) of the Code to "recommend to the Commission the course that ought to be taken with respect to the complaint", or ^{of} _^ the Minister, under section 13(6) to "issue whatever order he deems necessary to carry the recommendations of the board into effect." embrace all or most of the remedies which the New York Report recommends should be expressly conferred, I have concluded that they do in fact permit more to be done by way of enforcement than I felt at the time of the hearing. Accordingly, I have decided to recommend, and do hereby recommend, that the respondent, Mrs. Szoldatits be asked to write a letter of apology to Miss Duncan and, at the same time to write to those organizations and social agencies that have displayed an interest in the rights of members of minority groups to advise them that she no longer has a discriminatory policy with respect to accommodation. I would not, if she should refuse to comply, embody this request in the form of a ministerial order for the reasons I have already suggested. I

would, however, require the respondent to offer the next vacancy to Miss Duncan and if Miss Duncan is not, at that time, in a position to accept it, to render assistance, including financial assistance, in such amount as Miss Duncan demonstrates to the Commission she incurs, in obtaining alternative accommodation when she is next required to move, and I do so recommend.

Finally, as an expression of my concern that one should find discrimination among persons who have only recently come to Canada and who might, themselves, become victims of discrimination, I recommend that the Commission publicize the results of this inquiry as widely as possible to inform the public that discrimination of the kind practiced in this case is indeed a prohibited form of discrimination, and is prohibited even in respect of the rental of flats. I particularly recommend that such publicity should be undertaken in newspapers or periodicals published or distributed in Toronto in the Hungarian and German languages. While I am sure that discrimination of the kind shown in this case is no more prevalent among recently-arrived Canadians than among native Canadians, and, indeed, may even be rarer, one cannot be certain that publicity of the Province's human rights policy as expressed in this Report can have all the educational value it might otherwise have if it appeared only in the English language.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,



Horace Krever.

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